

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS MCBRIDE,

Plaintiff,

v.

AMERICAN SUBSTANCE ABUSE
PROFESSIONALS, INC., et al.,

Defendants.

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Case No. 2:10-CV-05737

HON. EDUARDO C. ROBRENO
FILED ELECTRONICALLY

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant National Diagnostics, Inc. (“NDI”), pursuant to Federal Rule of Civil Procedure 56(c) and Local Rule 7.1, hereby moves for summary judgment in this matter. Plaintiff Thomas McBride (“Mr. McBride”) cannot demonstrate that NDI acted negligently or was the proximate cause of his alleged injuries, and therefore, NDI asks this Court to dismiss Mr. McBride’s negligence action in its entirety.

Mr. McBride brought this negligence action after he tested “positive” for cocaine on a workplace drug test administered by NDI. He alleges that because he does not use cocaine, NDI must have been negligent in the testing process. A thorough review of the facts has revealed that Mr. McBride’s test was in all respects collected, analyzed, and reviewed according to the rigorous standards adopted by NDI, Mr. McBride’s then-employer, and Mr. McBride’s union. Mr. McBride cannot point to any allegedly wrongful act, deviation from the agreed standard of care, or expert theory that would allow a reasonable jury to conclude that his drug test should not have been reported “positive” for cocaine or that NDI acted negligently in any other respect.

Despite engaging in months of discovery, Mr. McBride has adduced no evidence whatsoever to support his claim that NDI acted negligently with respect to his drug test result, and therefore no evidence whatsoever to suggest that NDI's acts proximately caused the harm he claims to have suffered. Mr. McBride's negligence claim is based on nothing more than his own speculative belief that his "positive" drug test results are inaccurate. Accordingly, no reasonable fact-finder could conclude that NDI was in any way negligent in the administration of Mr. McBride's drug test, and this Court should grant Defendant's Motion and enter summary judgment for NDI, dismissing Mr. McBride's Second Amended Complaint in its entirety.

NDI respectfully refers this Court to the accompanying Memorandum of Points and Authorities in Support of its Motion for Summary Judgment for the legal and factual authorities on which it relies in bringing this Motion.

Dated: April 23, 2012

Respectfully submitted,

LITTLER MENDELSON, P.C.

By: /s/ Nancy N. Delogu

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Counsel for Defendant
National Diagnostics, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2012, a copy of the foregoing Defendant National Diagnostics, Inc.'s Motion for Summary Judgment, accompanying Memorandum of Points and Authorities in Support of Defendant's Motion for Summary Judgment, and Proposed Order with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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